

NARILOS

1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

14 Cr. 652 (PGG)

5 EFRAIN LORA,

6 Sentence

7 Defendant.

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8 New York, N.Y.
9 October 27, 2023
10 3:00 p.m.

11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

DAVID ROBLES

17 Assistant United States Attorney

18 GRAVEL & SHEA

19 Attorneys for Defendant

BY: DAVID WILLIAMS

20 Also Present:

21 Gabriel Mitre, Interpreter (Spanish)

22 Jill Hoskins, Interpreter (Spanish)

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(Case called)

MR. ROBLES: Good afternoon, your Honor. David Robles for the government.

MR. WILLIAMS: Good afternoon. David Williams from Burlington, Vermont.

THE COURT: This is on my calendar for purposes of resentencing. The procedural history is as follows: The defendant was convicted at trial of (b)(1)(A) violation of 21 United States Code, Section 864, narcotics conspiracy and also aiding and abetting the discharge of a firearm in connection with a drug conspiracy, a discharge that resulted in the death of a person in violation of 18 United States Code, Section 924(j). He was also convicted after causing an intentional killing of Andrew Balcarran in connection with the charged drug conspiracy in violation of 21 United States Code, Section 848(e)(1)(A). In an August 10, 2019 order, I vacated the jury's finding as to drug quantity finding that the government had not proven (b)(1)(A) quantities beyond a reasonable doubt. I therefore vacated the defendant's conviction on Count Two, the 848 count, because the government had not proven that the underlying drug conspiracy involved (b)(1)(A) quantities of drugs which is a requirement for a Section 848(e) conviction. I otherwise upheld the jury's verdict citing docket 190.

On September 3, 2019, the defendant moved for leave to file a judgment -- a motion for a judgment of acquittal on the

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1 924(j) count arguing that the evidence was insufficient to
2 state his conviction. I denied that motion on November 4, 2014
3 citing docket 196. On December 18, 2019 I sentenced the
4 defendant to 25 years imprisonment on the narcotics conspiracy
5 count and to five years imprisonment on the section 924(j)
6 count with those terms running consecutively citing the
7 judgment, docket No. 207. At sentencing, I noted that pursuant
8 to *United States v. Barrett*, 937 F.3d 126 at 12902, Second
9 Circuit 2019, the sentence I imposed on the section 924(j)
10 count had to run consecutive to the sentence imposed on the
11 narcotics conspiracy count. And had to be at least five years
12 imprisonment in accordance with 18 United States Code,
13 Section 924(c), citing the sentencing transcript docket No. 210
14 at pages 12 through 13.

15 On December 23, 2019, the defendant appealed his
16 conviction arguing, among other things, that the evidence was
17 insufficient to support his section 924(j) conviction. On
18 March 8, 2022, the Second Circuit affirmed, by summary order,
19 citing *United States v. Lora* 2022 Westlaw 453 368, Second
20 Circuit February 15, 2022. The defendant petitioned for
21 certiorari on the issue of whether a sentence imposed for a
22 section 924(j) conviction must run consecutively to any other
23 sentence imposed at the same time. On July 18, 2023, the
24 Supreme Court ruled that a conviction under 18
25 United States Code, Section 924(j) does not require the

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1 imposition of a mandatory consecutive sentence. It vacated the
2 Second Circuit's judgment and remanded the case for further
3 proceedings. See *Lora v. United States* 599 U.S. 453, 2023. On
4 July 19, 2023, the Second Circuit vacated this Court's judgment
5 and remanded the case for further proceedings consistent with
6 the Supreme Court's decision citing docket No. 321. On
7 July 20, 2023, I set resentencing for August 4, 2023. At the
8 government's request, I adjourned resentencing until today
9 citing docket 322, 325, 334, and 336. In preparation for this
10 resentencing, I have read the revised presentence report dated
11 December 4, 2019. I have read the government's submissions
12 dated December 13, 2019, December 16, 2019, August 8, 2023,
13 August 10, 2023, and September 8, 2023, as well as the
14 defendant's December 13, 2019 and August 10, 2023 submissions,
15 and the attached exhibits.

16 Mr. Williams have you read the revised presentence
17 report's recommendation and discussed it with Mr. Lora?

18 MR. WILLIAMS: Yes.

19 THE COURT: Mr. Lora, has the presentence report been
20 read to you in Spanish and have you discussed it with
21 Mr. Williams?

22 THE DEFENDANT: I have not received any paperwork in
23 Spanish. I have asked that all the paperwork be given to me in
24 Spanish. I have not received a single document in Spanish
25 about my court appearance.

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1 THE COURT: I asked you a different question. I am
2 going to repeat the question.

3 MR. WILLIAMS: Your Honor, if I may. I did not, read
4 to him the entire presentence report. That was done by my
5 predecessor counsel as indicated in the earlier sentencing
6 proceeding. Nothing in that presentence report has changed. I
7 met with my client in August in preparation for what I thought
8 would be the sentencing hearing in early August. We went over
9 the sentencing issues with him and what I was going to do and
10 what I had done in my sentencing submissions. He has, in fact,
11 asked me for Spanish translations of the hundreds of pages of
12 documents that I have submitted to the Court. I am here *pro*
13 *bono*. I don't have the resources to translate everything into
14 Spanish.

15 THE COURT: So, Mr. Lora, the question I have for you
16 is at any point in time, whether 2019 or in 2023, the
17 presentence report has been read to you in Spanish?

18 THE DEFENDANT: No.

19 THE COURT: OK. We are going to have to adjourn. The
20 defendant has a right to know what is in the presentence
21 report. It hasn't, apparently, been read to him in Spanish.
22 So, I see no way that we can proceed today.

23 MR. WILLIAMS: There are Spanish interpreters here
24 today. I know the court is paying for them. Is there any
25 chance that they could work with us today to go over the

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1 presentence report, which I have with me, so that at least when
2 we come back whenever, there will be an affirmative answer to
3 that question?

4 THE COURT: Is the interpreter available? You are?

5 MR. MITRE: Your Honor, it is defense counsel's
6 responsibility to arrange for that. But if your Honor so
7 orders, we are here to follow whatever you decided.

8 THE COURT: Yes. I think defense counsel makes a
9 point, which is that we should try to take advantage of the
10 fact that we have the interpreter, we have the presentence
11 report. There is no reason why it can't be interpreted to him
12 now. It is going to take some time because it is a lengthy
13 document. So, I don't think we can do much more than have the
14 document read to him today. But I think we should take
15 advantage of the time and the availability of the interpreter
16 and get as much done today as we possibly can.

17 MR. WILLIAMS: I appreciate that. We will be back
18 whenever the Court sets the case for rehearing.

19 THE COURT: Just give me a moment because I want to
20 check. I want to check the sentencing transcript because, of
21 course, it is my practice always to inquire of a defendant who
22 doesn't speak English whether the presentence report has been
23 read to him in Spanish. So, I want to see whether I did that
24 back at the original sentencing that preceded the appeal. So,
25 just give me a moment if you would.

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1 I am looking at the sentencing transcript from the
2 December 18, 2019 sentencing, the original sentencing. The
3 first thing I will say is that the transcript indicates that
4 two Spanish interpreters were present for the sentencing. At
5 the outset of the sentencing, I said the following to Mr. Lora,
6 and I quote, Mr. Lora, has the presentence report been read to
7 you in Spanish and have you discussed it with Mr. Patell. It
8 says the interpreter, yes, the defendant responded in English.

9 So, back on December 18, 2019, the defendant told me
10 that the presentence report had been read to him in Spanish.
11 Can you consult with him to find out why he is saying something
12 different today?

13 MR. WILLIAMS: I will.

14 THE COURT: OK.

15 MR. WILLIAMS: It has been a while since I read the
16 sentencing transcript, but that was my understanding of what
17 happened.

18 THE COURT: Maybe you can take a moment and talk with
19 him about this.

20 MR. WILLIAMS: Thank you for that opportunity, your
21 Honor. Mr. Lora now remembers. I showed him my copy of the
22 transcript. He remembers he did, in fact, have that
23 opportunity to have it read to him in Spanish way back almost
24 four years ago. I explained to him that nothing has changed in
25 the report since then. I explained that I had submitted some

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1 new material that may or may not be referred to by the court
2 including individualized needs plan, and I also explained to
3 him the fact that the mandatory -- the maximum sentence for the
4 drug conviction is now 20 years and that the Court does not
5 have to sentence him to a consecutive five-year mandatory
6 minimum sentence, and that those changes will probably be
7 reflected at today's sentencing hearing.

8 THE COURT: All right.

9 So, Mr. Lora, you now remember that the presentencing
10 report was read to you before the original sentencing in 2019?

11 THE DEFENDANT: Yes, your Honor.

12 THE COURT: Now, it has been --

13 THE DEFENDANT: What happens is that I got a letter
14 from the court once, and in the letter it said that the maximum
15 that I could face over the drugs, they were saying that it was
16 ten to 15 kilos, and it was 15 grams they found on me not 15
17 kilos. Ten to sixteen months.

18 THE COURT: I'm sorry, I am not understanding.

19 MR. WILLIAMS: I don't understand that either, your
20 Honor. I am unaware of any --

21 THE DEFENDANT: I sent him copies of the paperwork.

22 MR. WILLIAMS: I am unaware of any correspondence from
23 the court to my client. I have provided my client with copies
24 of many of the documents that I have filed with the Court,
25 except for those that I filed under seal. For obvious reasons,

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1 I didn't want those floating around the jailhouse. But I am --
2 I don't know where -- I don't understand what he is talking
3 about.

4 THE COURT: Well, I think, what he may be talking
5 about is something I touched on at the outset which is that
6 originally the government had argued (b)(1)(A) quantities of
7 drugs and I issued a decision, despite the jury's verdict,
8 finding that the government had not proven (b)(1)(A) quantities
9 of drugs. So, it may be that that is what he is talking about
10 when he is referring to the 15 kilograms of cocaine.

11 But, what I need to know, Mr. Lora, is first of all,
12 you now recall that the presentence report was read to you in
13 Spanish?

14 THE DEFENDANT: I do remember that it was read to me
15 in Spanish, but what I don't understand, your Honor, and excuse
16 me, but I was never caught with any drugs on me. And they are
17 putting on me 15 kilos or 280 grams of crack cocaine. But my
18 police report shows I wasn't caught with anything.

19 THE COURT: That is what I am trying to explain to
20 you, sir, is that after your trial, although the jury had
21 convicted you of having possessed five kilograms or more of
22 cocaine as well as other quantities of drugs, I decided that
23 that verdict was not supported by the evidence. So, you are
24 not facing the mandatory sentences associated with the
25 quantities of drugs that you are referring to. Do you

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1 understand what I am saying?

2 THE DEFENDANT: I understand that, your Honor.

3 THE COURT: There is no mandatory time that applies to
4 you either as to the drugs or as to the murder count.

5 THE DEFENDANT: I understand that, but I will tell you
6 one thing. I have never touched a firearm in my entire life
7 and I have never hung out with that person. I have never hung
8 out with any of those four. I have been working at a bodega
9 for 24 years with the same people. And of those people, none
10 of those people sells drugs. So, I don't understand why I am
11 being accused of something I haven't done. Because if I were
12 guilty of this, I wouldn't be telling you this right now
13 because I have family, I have children, I have grandchildren.
14 And I've spent my whole life just working. On my bank card, I
15 don't even think I have \$200 there.

16 THE COURT: All right. It is important that you
17 understand that there was a trial in this case and the jury
18 found you guilty.

19 THE DEFENDANT: I understand that. But what happens
20 is that I, presumably, was to have called Tito when that
21 happened. And I didn't place that call. They found out
22 themselves that it wasn't me who placed that call. It was
23 someone else. And regardless, I am getting so much time.

24 THE COURT: My question to you, Mr. Lora, is
25 understanding that you had the presentence report read to you

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1 in Spanish, back in 2019, that is four years ago.

2 THE DEFENDANT: Exactly.

3 THE COURT: Do you want the presentence report read to
4 you again given the passage of time, read to you again in
5 Spanish?

6 THE DEFENDANT: No, your Honor. And I respect your
7 decision if you have considered everything that has been found
8 out. And my family are not people to be doing things on the
9 street.

10 THE COURT: OK. So, I am going to proceed with the
11 resentencing because the defendant has indicated that the
12 presentence report was previously read to him in Spanish and
13 that he sees no need to have it read to him again.

14 The defendant has objected to factual portions of the
15 presentence report as well as to the guidelines calculations
16 set forth in the presentence report. Citing the defendant's
17 objections, docket No. 331. I am going to address the factual
18 objections to the resentence report now.

19 I reviewed the evidence offered at trial in some
20 detail in the August 10, 2019 order and in the November 4, 2019
21 order, and I will only summarize the proof here. As I stated
22 in the November 4, 2019 order, and I quote, the evidence at
23 trial show that Lora controlled a drug trafficking spot at
24 169th Street and Franklin Avenue in the Bronx. Lora supplied
25 the cocaine and crack cocaine sold by his co-defendants at that

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1 location. See for example trial transcript at 44-45, 107,
2 109-110, 127-132, 177-180, 190, 218, 223, and 245. The
3 evidence further demonstrating that Andrew Balcarran, the
4 victim of the charged shooting, was a competing drug dealer who
5 operated on 170th Street and that Balcarran was murdered
6 because Lora and a co-defendant wanted to take over Belcarran's
7 170th Street drug selling location. *Id.* at page 263. One of
8 the shooters testified that Lora was involved in and present
9 during the lead up to the shooting. *Id.* at page 203 and 263.
10 And that Lora reported Balcarran's location to the shooters
11 immediately before Balcarran was shot to death. *Id.* at pages
12 255 to 256. Given this evidence and drawing all permissible
13 inferences in favor of the government, as this Court must, see
14 *United States v. Taylor*, 816 F.3d 12 at 22 Second Circuit
15 (2016), a rational trier of fact *Id.* could have found Lora
16 caused Balcarran's death by aiding and abetting the discharge a
17 firearm in furtherance of the charged narcotics conspiracy in
18 violation of 18 United States Code, Section 924(j), close quote
19 citing the November 4, 2019 order docket No. 196, page 3. The
20 proof of the murder conspiracy is also summarized in my
21 August 10, 2019 order citing docket No. 190 at pages 3 through
22 5.

23 I will now turn to the defendant's objections to the
24 factual portions of the presentence report. Many of the
25 objections were made at the original sentencing back on

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1 December 18, 2019. At the outset, let me say the most damaging
2 evidence against Lora came in through Dery Caban, Lora's
3 co-conspirator in the murder of Andrew Balcarran. Caban was
4 the cousin of Luis Lopez, a member of Lora's drug crew, and it
5 was Luis Lopez's idea to approach his cousin about committing
6 the murder of Balcarran, citing presentence report paragraph
7 16. I have observed Caban testify about these matters on three
8 occasions. First, at Lora's trial, then at co-defendant Luis
9 Trujillo's *Fatico* hearing, and then at co-defendant Oscar
10 Palmer's *Fatico* hearing. At each proceeding, Caban was the
11 critical witness. And at each proceeding, Caban was
12 cross-examined by a highly experienced defense counsel. On all
13 three occasions, I found Caban's account of Balcarran's murder
14 and the defendant's drug trafficking activities credible. And
15 Lora's jury, likewise, must have found Caban credible because
16 their verdict turned on his testimony.

17 In any event, I will now address paragraph by
18 paragraph Lora's objections to the factual portions of the
19 presentence report. Lora objects to paragraph 13 of the
20 presentence report which provides information about his
21 institutional adjustment. Lora argues that this paragraph
22 should be updated to reflect the information set forth in his
23 most recent individualized needs plan program review dated
24 August 17, 2022, citing the defendant's objections to docket
25 331 at page 1. See also docket No. 333-2. The government does

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1 not disagree, citing docket No. 337 at page 3. Accordingly,
2 the objection is sustained and I will consider the August 17,
3 2022 individualized needs plan program review. In connection
4 with paragraph 13 of the presentence report, I should also note
5 that there is a typographical error which will be corrected.
6 There is a reference to someone named Ferrero. That reference
7 will be changed to Lora.

8 Lora objects to paragraph 15 of the presentence
9 report, and states that he supplied cocaine to members of his
10 crew including Louise Trujillo and Luis Lopez. Paragraph 15
11 further states Lora was a leader primarily supplier of drugs
12 and that Trujillo and Lopez reported to Lora. Lora argues
13 that, quote, there is no direct and/or reliable evidence that
14 Trujillo and Lopez were members of Lora drug distribution crew,
15 close quote. That quote, there is no evidence circumstantial
16 or direct that Trujillo ever sold drugs for Lora or that he
17 took orders from Lora, close quote. That when Lopez met with
18 federal investors in proffer sessions, quote, Lopez never
19 alleged that he ever sold drugs for Lora or took orders from
20 him, close quote. And that at his change of plea hearing,
21 Lopez referred to Palmer, not Lora, as his quote, boss, close
22 quote citing defendant's objections docket No. 331 at pages 1
23 through 2, quoting docket No. 59 at pages 18 through 19. The
24 evidence at trial, however, showed Lora controlled a drug
25 trafficking spot at 169th Street in Franklin Avenue in the

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1 Bronx. Lora supplied the cocaine and crack cocaine sold by his
2 co-defendants at that location. See for example trial
3 transcript at pages 44-45, 107-110, 127-132, 177-180, 190,
4 218-223 and 245. Lora, himself, sold drugs at that location
5 and he oversaw a crew that sold drugs for him including Oscar
6 Palmer, also known as Tito, Luis Lopez, and others. Several
7 witnesses testified at trial that they had bought cocaine
8 directly from Lora. This proof is discussed in detail in my
9 August 10, 2019 order, citing docket No. 190 at pages 5-8.
10 Moreover, at Palmer's June 28, 2022 *Fatico* hearing, Caban
11 testified that Lopez introduced Palmer to Caban as Lopez's
12 boss, which he understood to mean, quote the person who was in
13 charge of selling the drugs, close quote, and that Lopez also
14 told Caban that Lora was Palmer's "boss" citing the Palmer
15 *Fatico* hearing transcript, docket No. 293 at pages 125 and 131.
16 Caban also overheard Palmer and Lopez complaining about
17 "stingy" Lora was and sharing the profits from his drug
18 operation. In sum, to the extent that Lora objects to the
19 statement that he was a, "leader and primary supplier," of the
20 drug distribution crew, the objection at paragraph 151
21 overruled. As to whether Luis Trujillo sold drugs for Lora, at
22 Palmer's September 19, 2022 *Fatico* hearing, I stated that I
23 was, "not aware of any evidence that Trujillo actually sold
24 drugs at the Franklin Avenue location" or any evidence
25 demonstrating that, "Trujillo and Palmer viewed as partners the

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1 drug distribution business." Citing the September 19, 2022
2 transcript, docket No. 311 at page 28. Accordingly, to the
3 extent that Lora objects to the presentence report statement
4 that Luis Trujillo sold drugs for Lora, the objection is
5 sustained. Lora objects to paragraph 16 of the presentence
6 report which states Palmer, Trujillo, and Lopez were threatened
7 by Balcarran. Lora argues that, "There is no evidence
8 supporting the allegation that Andrew Balcarran ever threatened
9 Luis Trujillo." Citing the defendant's objections docket
10 No. 331 at page 2. The government states that it, "has no
11 objection to striking Trujillo's name from that sentence"
12 because the evidence shows that, "there was a dispute between
13 Balcarran and Palmer about drug dealing territory that resulted
14 in Balcarran threatening Palmer who had who held a supervisory
15 role in the drug conspiracy led by Lora." Citing the
16 government's brief 337 at page 5. I am, therefore, sustaining
17 Lora's objection to paragraph 16.

18 Lora also objects to paragraph 17 which states that he
19 directed Trujillo and Lopez to, "take care of the problem, and
20 get rid of Balcarran." As I have already discussed, a
21 reasonable jury could have concluded that Lora ordered his
22 underlinings to murder Balcarran. Lora led a drug crew selling
23 drugs at 169 Street and Franklin Avenue, Balcarran had a
24 competing drug operation a block away. There was evidence that
25 Balcarran had threatened the chief lieutenant, Oscar Palmer,

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1 also known as Tito, demanding that he either stop selling drugs
2 at that location or that he sell drugs for Balcarran. Citing
3 the trial transcript at pages 126-127, 203, 250-254, 262-263,
4 278, 289-290. On the day of the murder, Lora followed his
5 co-conspirators by car as they obtained the firearms that were
6 used to kill Balcarran. He drove around the neighborhood
7 searching for Balcarran. And it was Lora who informed the
8 shooters where Balcarran was standing immediately before the
9 murder. And there was evidence that one of the conspirators,
10 Luis Lopez, told one of the shooters that Balcarran was killed
11 so that Lora and his chief lieutenant, Tito, could take over
12 Balcarran's drug selling spot. See August 10, 2019 order
13 docket No. 190 at pages 5 through 8. Lora argues, however,
14 that at Palmer's sentencing, I struck a similar statement and
15 Palmer's presentence report noting that I was, quote, unaware
16 of evidence demonstrating that Lora told Palmer, to quote, take
17 care of the problem, close quote. Citing defendant's objection
18 docket No. 331 at page 2, which in turn is quoting the
19 September 19, 2022 transcript, docket No. 311 at page 26. But
20 paragraph 17 of Lora's presentence report addresses his
21 interactions with Trujillo and Lopez, not his interactions with
22 Palmer. In any event, while there was no testimony at trial
23 that Lora told Trujillo and Lopez to, "take care of the
24 problem," it is a fair inference from the evidence that
25 Trujillo and Lopez were acting at Lora's behest and collecting

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1 the guns to used to kill Balcarran and in approaching Caban
2 about committing the murder. Lora tailed his co-conspirators
3 as they collected the guns. He searched for Balcarran in the
4 neighborhood. He informed the shooters where Balcarran was
5 immediately before the murder and he was the primary
6 beneficiary of Balcarran's murder. As I noted in sentencing
7 Palmer, "it is a fair inference from the evidence that Lora,
8 Palmer, and Lopez had concluded that if they wanted to continue
9 selling drugs at that location, they would have to murder
10 Balcarran." Citing the September 19, 2022 transcript, docket
11 No. 3311 at page 17. In sum, to the extent that paragraph 17
12 suggests there was evidence at trial that Lora told Trujillo
13 and Lopez to, "take care of the problem," Lora's objection is
14 sustained. But that does not change the fact, that Palmer,
15 Trujillo, and Lopez were acting at Lora's behest in connection
16 with the murder of Balcarran.

17 Lora objects to paragraph 22 of the presentence report
18 which states that he wanted to take control of over Balcarran's
19 drug spot, and that after Balcarran's death, Lora did, in fact,
20 gain control over that drug spot and maintained control over it
21 for years. Lora argues that Caban's, "hearsay testimony he
22 learned from Lopez that Balcarran was murdered, because Lora
23 wanted to take over Balcarran's drug spot is directly
24 contradicted by the hearsay declarant Luis Lopez." Citing
25 statements Lopez made to federal investors between

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1 December 2015 and February 2016 as well as certain statements
2 Lopez made at his guilty plea. Citing defendant's objection,
3 docket No. 331 at pages 2 through 3.

4 The hearsay point is wrong for multiple reasons. As
5 an initial matter and as Lora's counsel well knows, having
6 represented Lora on appeal, the Second Circuit found that
7 Caban's testimony was not hearsay but instead was a statement
8 against interest under federal rules of evidence 804(b)(3),
9 citing *United States v. Lora*, 2022 Westlaw, 453368 at *1-2,
10 Second Circuit, February 15, 2022. In any event, a court may
11 consider hearsay at sentencing because the rules of evidence do
12 not apply at sentencing. In any event, as I have said, Caban's
13 testimony has been tested through vigorous cross-examination at
14 three proceedings. To the extent that there is any gap between
15 his account on this point and what Lopez has said, I find Caban
16 to be more reliable. Finally, as I have stated, Lora was the
17 primary beneficiary of Balcarran's murder. The evidence at
18 trial showed that except for a 6-month period following
19 Balcarran's murder, Lora sold drugs at the 169th Street and
20 Franklin Avenue location on the daily basis between 1997 and
21 2015. It is a fair inference that the murder of Balcarran
22 allowed Lora to maintain his drug-selling operation for many
23 years in that neighborhood, the same neighborhood he previously
24 shared with Balcarran. Citing the trial transcript at 130-132,
25 134, 177, 179, 180-181. Accordingly, the objection to

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paragraph 22 is overruled.

Lora also objects to paragraph 23. That paragraph states he was the leader of a drug distribution in the Bronx in the vicinity of Franklin Avenue. That is exactly what the evidence showed. To the extent that Lora objects to that sentence, the objection is overruled for reasons I have already explained. Paragraph 23 states that Lora responsible for the distribution of 15 kilograms of cocaine and more than 700 grams of crack but notes that the Court vacated the jury's findings as to drug quantity. As I stated at the prior sentence, and I have repeated here today, I will disregard the reference to 15 kilograms of cocaine and the reference to 700 grams of crack cocaine.

As I also stated at the prior sentence, I will disregard the portion of paragraph 20 that states that Lora drove around the block to make sure that Balcarran was actually dead after the shooting. The evidence at trial does not support that assertion.

Does defense counsel have any additional objections to the factual portion of the presentence report?

MR. WILLIAMS: Not to the facts, your Honor.

THE COURT: Does the government have any observation to the factual portion of the presentence report?

MR. ROBLES: No, your Honor.

THE COURT: With the exception of the matters I said I

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1 would disregard and the objections I have sustained, I hereby
2 adopt the findings of fact set forth in the presentence report.

3 Although I am not required to impose sentence in
4 accordance with the sentencing guidelines, I am required to
5 consider what the guidelines recommend. Here, as I mentioned,
6 the defendant was found guilty at trial of aiding and abetting
7 the use of a firearm in connection with a narcotics conspiracy,
8 and thereby causing the death of Andrew Belcarran. He was also
9 convicted of conspiracy to distribute or possess with an intent
10 to distribute cocaine and cocaine base.

11 Pursuant to the grouping rules of the sentencing
12 guidelines, these two counts are grouped together because Count
13 One represents conduct that would be an adjustment to the
14 guideline applicable to the drug conspiracy charge in Count
15 Three. The guideline for the group defenses is found in
16 section 2(a)(1).1 of the sentencing guidelines which applies to
17 Count One and is applicable to Count Three by cross reference.
18 Lora has objected to the guidelines calculations set forth in
19 the presentence report, citing the defendant's objections to
20 docket 331 and he has moved to strike the prior felony
21 information filed by the government pursuant to Title 21 of the
22 United States Code, Section 851. Citing the defendant's motion
23 docket No. 329.

24 I will address these objections and the motion now.
25 Lora objects to paragraph 37 of the presentence report which

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1 states that the base offense level is 43. Lora contends, "the
2 evidence in this case is insufficient to prove that
3 Andrew Belcarran's murder was premedicated." Citing
4 defendant's objection docket No. 331 at page 3, Lora first
5 contends that, "no one directed or, for that matter, even asked
6 Dery Caban to shoot Balcarran with a shotgun provided him to by
7 Palmer and Trujillo." That during Trujillo's *Fatico* hearing,
8 Caban testified before Trujillo handed him the shotgun, Caban
9 did not think that, "Tito wanted to kill Balcarran," but that
10 once Trujillo gave him the weapon, Caban, "had an understanding
11 of what he was going to do, i.e. shoot Andrew Balcarran." And
12 that, "there is no evidence that Lora observed Trujillo provide
13 Caban with a shotgun or that he otherwise knew that Caban was
14 armed when Trujillo pulled his car over once they found
15 Balcarran." *Id.* at pages 3 to 4.

16 For reasons I have already explained, the evidence was
17 more than sufficient to demonstrate that Lora aided and abetted
18 the premeditated murder of Balcarran. As an initial matter,
19 the conspirators picked up a shotgun and a handgun. A
20 reasonable jury could have found that they picked up the
21 firearms because the plan was to shoot Balcarran. Lora then
22 drove around the neighborhood trying to find Balcarran. Once
23 he did, he communicated to the shooters where Balcarran was,
24 not so they could drop by and say hello, but instead so they
25 could shoot Balcarran with the firearms they had just picked

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1 up.

2 The Second Circuit has already stated that, "the
3 sequence of events [I have just described] would allow a
4 rational jury to determine beyond a reasonable doubt that Lora
5 was an accomplice to the murder of Balcarran." Citing Lora
6 2022, Westlaw, 453368 at *3. Accordingly, the objection to
7 paragraph 37 is overruled.

8 Lora also objects to paragraph 40 of the presentence
9 report which imposes a four level rule in offense enhancement
10 because Lora was an organizer and leader of a drug conspiracy
11 that involved five or more people or was otherwise extensive.
12 Lora argues that, "there is no reliable evidence that he was
13 the leader or organizer of a group of 5 or more neighborhood
14 street-level drug dealers." Accordingly to Lora, "the evidence
15 indicates that Lora was a lookout who had no advance knowledge
16 that Caban was either armed or that he intended to shoot and
17 kill Balcarran." Accordingly, Lora says he should actually
18 receive a two-level reduction in his offense level under
19 section 3B1.2B of the sentencing guidelines. Citing the
20 defendant's objection, docket No. 331 at page 5.

21 As I have stated however, the evidence shows that Lora
22 was the leader of a drug crew that distributed drugs in the
23 vicinity of 169th Street and Franklin Avenue for more than ten
24 years. His crew included himself, Oscar Palmer, also known as
25 Tito, Luis Lopez and others, including individuals that a

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1 witness referred to as Pedro, Joel, and Jimmy. Citing the
2 trial transcript at 134. See also August 10 2019 order docket
3 No. 190 at pages 5 through 8. In sum, the four-level
4 enhancement applies and the objection is overruled.

5 In any event, the finding as to role in the offense
6 has no impact on Lora's guidelines range because the top of the
7 guidelines is level 43 and Lora is at level 43 before any role
8 on the offense enhancement is applied.

9 Lora objects to paragraph 45 which states that the
10 total offense level is 43. He argues that based upon his
11 objections to the guidelines calculations, the total offense
12 level should be 36. Citing the defendant's objections, docket
13 No. 331 page 5. Because I overruled the defendant's objections
14 to the presentence report guidelines calculations, the total
15 offense level remains 43 and this objection is likewise
16 overruled.

17 Lora objects to paragraphs 56 through 59 which
18 addresses criminal history. Lora notes that at the first
19 sentence, I concluded that I would, "not impose criminal
20 history points for Mr. Lora's prior drug convictions." Citing
21 defendant's objections docket No. 331 at page 5 which, in turn,
22 is quoting the sentencing transcript docket No. 210 at page 12.
23 At the original sentence, I concluded that contrary to the
24 presentence report, Lora would not be sentenced to as a career
25 offender. Citing the sentencing transcript, docket 210 at page

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12. I reach the same conclusions here as to both points.

As to paragraph 57, Lora objects to the imposition of two criminal history points. Because he was on probation at the time of the instant offense. Citing the defendant's objections -- I'm sorry?

THE DEFENDANT: I wasn't on probation.

THE COURT: At the first sentence, I noted that Lora disputed that he was on probation at the relevant time but that he had not explained the basis for his objection. I concluded at the original sentencing that Lora has two criminal history points because he was on probation at the time he committed the instant offense. Citing the sentencing transcript docket No. 210 at page 12. Lora now argues that the instant offense occurred on August 11, 2002 and that paragraphs 49 through 52 of the presentence report indicated that he received conditional discharge sentences for four misdemeanor drug offenses, and that he completed those sentences on September 19, 2001, October 3, 2002, and December 24, 2002. Lora further argues that under the New York penal law, "when a court imposes a sentence of conditional discharge, the defendant shall be released without imprisonment or probation supervision." Citing defendant's objection docket No. 331, at page 6 which, in turn, is quoting the penal law section 65.05(1)(a) and (2). The S3 indictment charges Lora with a narcotics conspiracy that ran from 1990 to 2015 however. And

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1 in 2009, Lora was sentenced on two separate occasions to
2 five-year terms of probation following two 2008 convictions for
3 criminal possession of a controlled substance in the third
4 degree. Citing the presentence report paragraphs 54 through
5 55. The government contends that, "because Lora's prior
6 convictions constitute relevant conduct under USSG section
7 4A1.2 the two-point enhancement for committing the instant
8 offense while on probation does not apply," and that
9 "accordingly, Lora has no criminal history points and falls
10 into criminal history category I." Citing the government's
11 submission, docket No. 337 at page 9 which in turn is citing
12 USSG section 4A1.1D application note 4. I will accept this
13 logic and I will not impose two criminal history points for
14 committing the instant offense while on probation. I will note
15 that this issue is likewise academic because at level 43, the
16 guidelines recommend life imprisonment regardless of criminal
17 history score.

18 Lora objects to paragraph 86 of the presentence report
19 which states that a mandatory consecutive minimum term of
20 imprisonment of ten years imprisonment applies to Count One,
21 the section 924(j) charge. As I noted at the outset, the
22 Supreme Court has decided in this case that, "The consecutive
23 sentence mandate in section 924(c)(1)(D)(2) this does not
24 govern section 924(j) sentences." Citing *Lora* 599US at 143.
25 Lora's objection to paragraph 86 is therefore sustained.

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1 Section 924(j) does not mandate any particular term of
2 imprisonment for the section 924(j) charge nor does it mandate
3 that any sentence that is imposed on section 924(j) conviction
4 run consecutively to another term of imprisonment.

5 Lora also objects to paragraph 86 on the ground that
6 his, "prior conviction under New York Penal Code Section
7 220.16(1) does not qualify as a felony drug conviction under 21
8 United States Code, Section 802(44)." Citing defendant's
9 objection docket No. 331 at page 6. Lora also moves to strike
10 the prior felony information that the government filed pursuant
11 to 21 United States Code, Section 851 on this basis. Citing
12 defendant's motion docket No. 329. In his September 8, 2023
13 submission, the government states that it will move to dismiss
14 Lora's prior felony information in light of, among other
15 things, the Second Circuit's decision in *United States v.*
16 *Minter*, 2023, Westlaw 5730084, Second Circuit, September 6,
17 2023. Citing the government's brief, docket No. 337 at pages 2
18 and 9. In *Minter*, the Second Circuit held that, "New York
19 State's definition of cocaine is categorically broader than its
20 federal counterpart." Citing *Minter* 2023 Westlaw 5730084, *1.

21 Does the government at this point move to dismiss the
22 prior felony information?

23 MR. ROBLES: Yes, your Honor.

24 THE COURT: That motion is granted. The government
25 and Mr. Lora further agree the statutory maximum penalty for

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1 the narcotics conspiracy count is 20 years. Accordingly,
2 Lora's objection is sustained and the prior felony information
3 is dismissed.

4 Finally, Lora argues that the guidelines sentencing
5 range in this case should be 188 to 235 months based upon
6 offense level 36 and Criminal History Category I. Citing the
7 defendant's objection docket No. 331 at page 6. For the
8 reasons I have explained, I conclude the base offense level for
9 Counts One and Three is level 43. Citing the presentence
10 report paragraphs 31 and 36-37. Because Lora was an organizer
11 or leader of the drug conspiracy that involved five or more
12 participants or was otherwise extensive, four levels are added.
13 That would result in an adjustment offense level of 47.
14 However, pursuant to chapter 5, part A commentary note 2, "an
15 offense level of more than 43 is to be treated as an offense
16 level of 43." Citing the presentence report paragraph 45.
17 Accordingly, I conclude that Mr. Lora's total offense level is
18 43, I conclude that he falls within Criminal History Category
19 I, offense level 3. Category I results in a guideline
20 sentencing range of life imprisonment.

21 Mr. Williams, do you have any other objections to the
22 guidelines calculations as I have reported them?

23 MR. WILLIAMS: No, your Honor.

24 THE COURT: Does the government have any objections to
25 the guidelines calculations as I have reported them?

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1 MR. ROBLES: No, your Honor.

2 THE COURT: Based upon my independent evaluation of
3 the sentencing guidelines, I find that the total offense level
4 is 43, the criminal history category is I, and I recommended a
5 sentence of life imprisonment.

6 I will hear from you, Mr. Williams, as to an
7 appropriate sentence.

8 MR. WILLIAMS: Well, your Honor, you and I have
9 different views of the evidence obviously. You think that
10 Mr. Lora ordered the murder of Mr. Balcarran. But leaving that
11 aside, Mr. Lora, while having a number of prior convictions,
12 most of them are for pretty low-level drug offenses, a series
13 of misdemeanors. The police executed a search warrant at a
14 trailer he was living in at a vacant lot a couple of blocks
15 from the bodega where he worked in 2008. And they found a
16 small amount of cocaine, I think it was around \$1,500 to \$2,000
17 in cash, no drug ledgers, no phone lists, no customer lists,
18 nothing like that. Hardly the profile of a guy that ran a
19 well-oiled drug conspiracy on the corner of 169th and Franklin.
20 But I think more importantly, there is nothing in the record,
21 nothing at all, that Mr. Lora was a violent, assaultive person.
22 All of these arrests, stops, search warrants, no guns, no ammo.
23 None of the government's witnesses at trial describe Mr. Lora
24 as a dangerous person at all. And it seems almost
25 inconceivable to me -- and I have been doing this job for

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1 almost 40 years -- that a person approaching middle age would
2 suddenly go from being a low-level drug dealer making money on
3 the side, never assaulting people, never threatening people
4 would suddenly order what amounted to a drive-by murder in
5 broad daylight a couple of doors down from the bodega where he
6 had worked for years. It just doesn't make any sense to me.
7 Mr. Balcarran, I would note, and Mr. Lora occupied basically
8 the same space between the late '80s when Dorothy Hendrix told
9 the Court and the jury he was selling drugs out of the bodega
10 in 2002. Mr. Balcarran got into some trouble with the state
11 and the federal government and, according to those records,
12 Mr. Balcarran occupied an apartment with his mother a couple of
13 doors down from the bodega. He was released by a court in the
14 Southern District in 1994 or '95, I think, to that apartment.
15 I think it was 1389 Franklin. There didn't seem to be any
16 trouble between the two of them. And suddenly, Mr. Lora is
17 going to order the murder when he has been selling drugs in
18 that neighborhood for years with Mr. Balcarran living down the
19 street. It doesn't make any sense.

20 His experience in prison suggests that he is a
21 hard-working guy. He has worked -- I forget -- I didn't look
22 at the form that I submitted to the Court. I know he was
23 working. I think it was in the cafeteria. He was taking
24 classes. He was learning English while I met with him down in
25 the prison in August. He was -- I talked to him in English.

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1 He seemed to understand it. He is making progress. He had a
2 couple of fights in jail, that is it. Minor fights that would
3 be hard to avoid being in a penitentiary.

4 With all that in mind, your Honor, I would ask the
5 Court to cut his sentence in half, equal to Mr. Palmer.
6 According to Mr. Lopez -- and you are aware of this because you
7 saw the same documents I have seen and that the prosecutors
8 knew about -- it was a sixth guy involved in this other than
9 Trujillo and Palmer who gave the guns to Trujillo who was
10 driving the car in which Mr. Lora was riding. And he may have
11 been the one, according to Lopez at least, who made the call.
12 Mr. Lora didn't see five guys. He didn't show Caban how to
13 shoot the shotgun. He wasn't in the car with Caban when Caban
14 shot the shotgun into Mr. Balcarran's chest. What I find most
15 interesting is when they drove up to Mr. Balcarran, Palmer said
16 he was starting to get out of the car, maybe to talk to
17 Mr. Balcarran, maybe to shoot him with the gun he had. But, it
18 seems rather unlikely that Palmer would have gotten out of that
19 car knowing the guy sitting behind him, with a loaded shotgun,
20 was going to put himself in his endangerment. I truly believe
21 that given Mr. Caban's past, unlike Mr. Lora, given Mr. Caban's
22 past, this was more likely than not an impulsive decision that
23 Caban made. And we would ask the Court to impose a sentence
24 that reflects those facts. I appreciate the time. Thank you
25 very much.

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1 THE COURT: Mr. Lora, is there anything you wish to
2 say before the Court imposes sentence?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: You can remain seated. You can remain
5 seated. And just pull the microphone close so the interpreter
6 can hear what you are saying.

7 THE DEFENDANT: With all due respect to you, to the
8 Court, to my attorney also and to the interpreters, I swear --

9 MR. MITRE: I'm sorry, your Honor. I need to ask for
10 a repetition. I was not given the opportunity to interpret.

11 THE COURT: If you could speak in sentences and give a
12 break so that the interpreter can catch up with you, OK? Go
13 right ahead.

14 THE DEFENDANT: Excuse me. What I am going to tell
15 you, it comes from here. I have never in my life given orders
16 to anyone. Because I have never had employees. In fact, I
17 have always been employed since I was 16 years old as the owner
18 of the bodega where I worked. Asiade Jueva and his brother,
19 Manio Jueva, those people have never sold drugs ever since they
20 came to this country. And I have always been their employee.
21 So much so that they would give me the keys to the business.
22 That business was worth almost half a million dollars. Because
23 they trusted me. And you are not going to trust someone who's
24 doing bad things on the street like this, trust them with your
25 half-million-dollar business. And if you want, I will give you

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1 their phone number you can call them whenever you would like.

2 And that day that it happened, I was working at the bodega that
3 day. I worked for 16 hours.

4 MR. MITRE: The interpreter is asking for a
5 clarification.

6 THE DEFENDANT: Because the employee that was on shift
7 that day then spent the whole night at the bodega because he
8 was stocking. And so, I was working for hours that day at the
9 bodega and then the police asked me about Palmer and Trujillo.

10 Because I hadn't seen them in four days. They always
11 used to come by to buy sodas, plantains, eggs, because they had
12 a storefront that they had rented next door to the bodega.

13 At the same business, at the same place where the
14 bodega is, they had a place right next to it, a pool hall. And
15 the landlord was about to take the business away. He was
16 taking the business away from them. And so, it had been two
17 days or three days since the landlord had taken the business
18 away from them because he had realized they were doing
19 something illegal with the place.

20 I have nothing to do with those people. And I swear
21 to you on my mother's life and my son's life, my family who are
22 back there. I don't understand any of this. I never thought I
23 would end up in jail because I was with my family. I have a
24 ten-year-old daughter. She just turned ten. She was just two
25 years old when I was arrested. And the mother of my children

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1 is out there without work because she doesn't have anyone to
2 help her with the kids. She has six kids. I want to tell you,
3 six kids. She has three from me, and three from a prior
4 marriage.

5 So, I don't know how it is that they could accuse me
6 of this if I have nothing to do with those people. If I had
7 anything to do with those people, I would not have taken my
8 case to trial over something I didn't do. Because I have
9 nothing to do with those people. I haven't done anything.

10 THE COURT: Anything else, Mr. Lora?

11 THE DEFENDANT: What I would like to do is get out of
12 here to see my father because my mother passed away. She died
13 in the same month that I was arrested. My father is a little
14 over 90 years old and I don't know if I will get to see him
15 when I get out of here for something I haven't done.

16 I wouldn't dare tell him how long I was sentenced to
17 so that he don't die because he is diabetic he has a bad heart
18 and all that stuff. And being in jail for something I haven't
19 done, that is the worst thing that has happened to me in life.

20 THE COURT: All right. I will hear from the
21 government.

22 MR. ROBLES: Thank you, your Honor. I am happy to
23 answer any questions the Court has. I know the Court is very
24 familiar with the factual record in this case. So I will just
25 be very brief. As we laid out in our submission, the

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1 government believes that the sentence that the Court previously
2 imposed for Mr. Lora remains appropriate. And it is supported
3 by the well-developed factual record both at his trial, and at
4 subsequent proceedings. It is also in line with the sentences
5 the Court imposed on less culpable co-defendants, all of whom
6 accepted responsibility and all of whom, unlike the defendant,
7 dramatically turned their life around after the events that
8 occurred in 2002. As your Honor knows, this was an
9 execution-style broad daylight murder and the defendant stood
10 to gain from that as reflected by the fact that he continued to
11 sell drugs on that block for years after the murder.

12 So, with that, your Honor, unless the Court has any
13 questions, the government would rest on its submissions, both
14 the ones that were submitted in 2019, and the ones submitted
15 this year in connection with the resentencing and ask the Court
16 reimpose the same sentence imposed in December of 2019.

17 THE COURT: In deciding upon appropriate sentence, I
18 have considered all the factors listed in Title 18,
19 United States Code, Section 3553(a) including the nature and
20 circumstances of Mr. Lora's offenses, his personal history and
21 characteristics, the need for the sentence imposed to reflect
22 the seriousness of the offenses, the need to promote respect
23 for the law, to provide just punishment, and to afford adequate
24 deterrence to criminal conduct. I am also aware when
25 resentencing a defendant after a remand, as at an initial

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1 sentence, this Court is required to consider all of the factors
2 set forth in 18 United States Code, Section 3553(a) and make an
3 individualized assessment based upon the facts presented at a
4 sentencing hearing. Citing *United States v. Weingarten*, 713
5 F.3d 704, at 711, Second Circuit 2013. "Both at the initial
6 sentencing and on remand, an appropriate sentence is one based
7 upon the totality of the relevant conduct and on the character
8 of the accused." *Id.* "Where a Court of Appeals has remanded a
9 criminal case for resentencing, a District Court may, in some
10 circumstances, revise upward one component of a sentence after
11 another component was held to have been invalidly imposed."
12 Citing *United States v. Chaklader* 232 F.3d 343 and 346 Sixth
13 Circuit 2000. "An upward revision of one component of a
14 sentence when another component has been invalidated is
15 permitted only where the revised sentence would be imposed on a
16 count that was the same as or related to the count on which a
17 component of sentence was invalidated and only where the a
18 aggregate sentence was not so severe as to create an undue risk
19 of deterring others from subsequent challenges to sentence
20 components that might be unlawful." Citing *Chaklader* 232 F.3d
21 337. See also *Weingarten* 713 F.3d at 716 (concluding that "due
22 process was not violated when the defendant was resentenced to
23 the same aggregate total term of imprisonment after the vacatur
24 of one related count of conviction and the District Court
25 adequately justifies its new sentence.")

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1 As to the nature and circumstances of Mr. Lora's
2 offenses, I have discussed the facts of the case, in great
3 detail already. To summarize, Mr. Lora and his drug crew sold
4 cocaine and crack cocaine for more than 15 years in the
5 vicinity of 169th Street and Franklin Avenue in the Bronx.
6 Mr. Lora's business led him into conflict with a competing drug
7 dealer Andrew Balcarran who sold drugs a block away.
8 Mr. Balcarran threatened and tried to extort Mr. Lora's chief
9 lieutenant, Oscar Palmer, also known as Tito. As I have said,
10 it is a fair inference from the evidence that Lora decided that
11 Balcarran would have to be killed and that he communicated this
12 to his plot to his subordinates. One of Lora's workers, Luis
13 Lopez, approached his cousin, Dery Caban, who had recently been
14 released from prison about committing the murder. Lora
15 supervised the preparations from a distance. He was in the
16 vicinity when firearms were obtained from another conspirator's
17 home, and he drove around the neighborhood searching for
18 Balcarran on the day of the murder. When he found Balcarran,
19 who was standing in front of his home, he called his
20 subordinates who were waiting in a second car and reported to
21 them Balcarran's location. The subordinates and Caban then
22 drove to Balcarran's location, and two of Lora's
23 co-conspirators shot Balcarran to death in cold blood in front
24 of his home in broad daylight with his family inside. After
25 six months or so, Lora resumed his drug dealing at 169th Street

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1 Franklin Avenue location where he continued to sell drugs over
2 the next 13 years.

3 As to Mr. Lora's personal history and characteristics,
4 he was born in Santo Domingo in the Dominican Republic. He is
5 currently 53 years old. His parents separated when he was
6 young. Mr. Lora and his siblings were raised in poor
7 socioeconomic conditions, but he was provided with the basic
8 necessities. Mr. Lora has never married but he does have three
9 daughters with two prior partners. Mr. Lora lived in the
10 Dominican Republic until 1986. In that year, he came to the
11 United States settling eventually in the Bronx. He is a
12 permanent resident but currently under removal proceedings. As
13 to education, Mr. Lora dropped out of high school. As to
14 employment, Mr. Lora claims he was employed at various delis
15 and bodegas throughout Manhattan and the Bronx since his
16 immigration in the United States. He has not been able to
17 provide any details as to his employment, however. There is no
18 significant history of substance abuse. As to medical
19 conditions, Mr. Lora suffers from diabetes and from high blood
20 pressure. As to criminal record, Mr. Lora has eight prior
21 convictions, all of which are drug related. They span the
22 years between 1991 and 2009. Given this conviction history as
23 well as the evidence at trial, it is a fair inference that
24 Mr. Lora has supported himself through drug trafficking for
25 most of the many years he has been in this country. Citing the

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1 presentence report, paragraphs 48-55.

2 To summarize, the sentencing guidelines recommend a
3 sentence of life imprisonment. The probation department, in
4 the December 4, 2019 presentence report, recommends a sentence
5 of 30 years imprisonment on Count Three to be followed by a
6 consecutive term of life imprisonment. On Count One the
7 government asked me to reimpose an aggregate sentence of 30
8 years imprison. Mr. Lora requests a sentence of 188 months
9 imprisonment. With all of this in mind, I will now describe
10 the sentence I intend to impose. Then I will ask the parties
11 if there is anything further they wish to say.

12 Mr. Lora spent most of his adult life committing
13 crimes. He consistently sold drugs in his neighborhood over a
14 period of more than 15 years. Although he was repeatedly
15 arrested and convicted of drug trafficking crimes he never
16 served any jail time. Ultimately, Mr. Lora's drug business put
17 him in conflict with a competing drug dealer. And the
18 evidence showed that Mr. Lora decided that that man had to be
19 murdered. I conclude that a severe sentence must be imposed
20 given the nature of Mr. Lora's crimes, the fact that they
21 involve both murder and drug trafficking and the fact he has
22 committed serious crimes for much of his adult life. I do
23 believe that he presents a significant danger to the community
24 having considered all of the circumstances. I intend to impose
25 an aggregate sentence of 30 years imprisonment. I conclude

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1 that a life sentence is not necessary given that Mr. Lora is 53
2 years old.

3 As to supervised release, although I expect that
4 Mr. Lora will be deported after serving his sentence, in the
5 event that he is not, he will be subject to an aggregate
6 sentence of five years supervised release. I intend to impose
7 the following mandatory conditions of supervision, Mr. Lora
8 will not commit another federal, state, or local crime. He
9 will not unlawfully possess a controlled substance. He will
10 cooperate in the collection of DNA as directed by the probation
11 officer. He must refrain from any unlawful use of a controlled
12 substance. He will submit to one drug test within 15 days of
13 release from imprisonment and at least two periodic drug tests
14 thereafter. I intend to impose the standard conditions of
15 supervised release set forth in the presentence report along
16 with a following special conditions. The defendant will submit
17 his person and any property residence, vehicle, papers,
18 computer, other electronic communication or data storage device
19 to a search on the grounds that there is a reasonable suspicion
20 that a violation of the conditions of his supervised release
21 may be found. Failure to submit to a search may be grounds for
22 revocation. The defendant will warn any other occupants that
23 the premises may be subject to search pursuant to this
24 condition and any search must be conducted at a reasonable time
25 in a manner reasonable manner. The defendant will obey the

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1 immigration laws and comply with the directives of the
2 immigration authorities. I do not intend to impose a fine
3 because I find Mr. Lora lacks the ability to pay a fine. I am
4 required to impose a \$200 special assessment.

5 Mr. Williams, is there anything further you wish to
6 say?

7 MR. WILLIAMS: No thank you, your Honor.

8 THE COURT: Mr. Lora, is there anything further you
9 wish to say?

10 THE DEFENDANT: Sir, excuse me. And I'm sorry, but
11 how much is the sentence that I have received?

12 THE COURT: Yes. You have received a sentence of 30
13 years that I am about to impose.

14 THE DEFENDANT: Excuse me, but I think that that is
15 unjust because I have committed no crime and I have not given
16 any order. And God up above and everyone knows that I have not
17 given any order. May I be stricken in down now otherwise. I
18 have never caused anybody any harm, nor will I ever, because my
19 mom did not raise me that way.

20 THE COURT: Does the government wish to ask anything
21 else?

22 MR. ROBLES: No, your Honor.

23 THE COURT: Mr. Lora, for the reasons I have just
24 stated, it is the judgment of this Court you be sentenced to
25 twenty years imprisonment on Count Three and ten years

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1 imprisonment on Count One, with those times to run
2 consecutively. You are sentenced to five years supervised
3 release on Count One and three years supervised release on
4 Count Three with those terms to run concurrently. Give me a
5 moment, please.

6 Let me correct that. You are sentenced to three years
7 supervised release on Count One. Sorry. You are sentenced to
8 five years supervised release on Count One and three years
9 supervised release on Count Three with those terms to run
10 concurrently. Your terms of supervised release will be subject
11 to the mandatory standard and special conditions of supervised
12 release that you just mentioned. You are also ordered to pay a
13 special assessment in the amount of \$200.

14 Are there any open counts?

15 MR. ROBLES: I don't believe so, your Honor. But to
16 the extent there are, the government moves to dismiss them.

17 THE COURT: That motion is granted.

18 Mr. Williams, do you have any recommendations as to
19 assignment?

20 MR. WILLIAMS: No, your Honor. I don't. He is
21 currently serving time in a penitentiary in Pennsylvania. One
22 of the problems that he has with his classification is that the
23 Bureau of Prisons believes for some reason -- I tried to
24 correct it -- that Mr. Lora is currently on probation. He is
25 not. And I don't know whether you can put in to the judgment a

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1 line indicating that Mr. Lora is not on state probation here in
2 New York. I submitted the email from -- I think it was the
3 deputy chief probation officer in New York City. You have seen
4 that email.

5 THE COURT: Well, yes. I am familiar with that email.
6 I mean, why can't you submit that email to the Bureau of
7 Prisons officials? Have you done that?

8 MR. WILLIAMS: Yes, I have. It doesn't get through.
9 I don't know why. I don't know whether I have the whole story,
10 whether that is the one thing that keeps him in a penitentiary.
11 Given his criminal history, his lack of escapes, that kind of
12 thing, it seems to me his classification would be much lower
13 than penitentiary which is, as you know, is for the worst of
14 the worst.

15 THE COURT: Well, the problem is that he has the
16 conviction for murder. I mean, I would suspect that that has a
17 lot to do with his classification and prison; right?

18 MR. WILLIAMS: I understand that. It is simply my
19 understanding, from my client, that he has been told that the
20 reason his classification is so high is that the Bureau of
21 Prisons thinks he is on probation and there maybe some other
22 factor I don't know. But if the judgment were to reflect that
23 fact, then maybe something different could happen. If he is
24 qualified, we would ask he be sent to --

25 THE COURT: Sorry. I can't hear you, sir.

NARILOS

1 MR. WILLIAMS: That he be sent to Otis.

2 THE COURT: Otisville.

3 MR. WILLIAMS: Or someplace closer to New York City
4 where his family resides.

5 THE COURT: Is that your application?

6 MR. WILLIAMS: Yeah.

7 THE COURT: I will include a recommendation in the
8 judgment that Mr. Lora be designated -- you said to Otisville?

9 MR. WILLIAMS: Yeah.

10 THE COURT: So that he may maintain ties with his
11 family during his remaining period of incarceration.

12 Mr. Lora, I am required to advise you of your appeal
13 rights. You do have the right to appeal your conviction and
14 the sentence I just imposed. With few exceptions, any notice
15 of appeal must be filed within 14 days of the judgment being
16 entered in your case. Judgment will likely be entered on
17 Monday. Mr. Williams will discuss with you whether or not you
18 wish to file a notice of appeal. If you are not able to pay
19 the cost of an appeal, you may apply for leave to appeal in
20 *forma pauperis*. If you request, the Clerk of Court will file a
21 notice of appeal on your behalf.

22 Is there anything else from the government?

23 MR. ROBLES: No, your Honor. Thank you.

24 THE COURT: Anything else for the defense?

25 MR. WILLIAMS: No, your Honor.

NARILOS

1 THE DEFENDANT: I want an appeal.

2 THE COURT: We are adjourned.

3 (Adjourned)

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